

## EXHIBIT 4

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SVOTHI, INC., : Docket #25cv0333  
: :  
Plaintiff, : :  
- against - : :  
DARK ALLEY MEDIA LLC, et al., : New York, New York  
: Defendants. : February 19, 2025  
----- : :  
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PROCEEDINGS BEFORE  
THE HONORABLE ANDREW L. CARTER,  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For Plaintiff: MULLEN P.C.  
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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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2 THE CLERK: Good afternoon. This is Tara,  
3 Judge Carter's deputy. Who just joined the call please?

4 MR. MARTIN ARMS: This is Martin Arms from  
5 Mullen P.C.

6 THE CLERK: Thank you, Mr. Arms. Counsel,  
7 today's proceeding is being recorded, so I ask that each  
8 time when you address the Court, please state your name  
9 prior to speaking, and when you're not addressing the  
10 Court, to please place your phone on mute. Thank you.

11 (indiscernible) for a telephone order to show  
12 cause hearing for a preliminary injunction and for a  
13 premotion conference in case number 25cv333, Svothi,  
14 Inc. v. Dark Alley, et al. Counsel, please state your  
15 appearances for the plaintiff.

16 MR. WESLEY MULLEN: Good afternoon, this is  
17 Wesley Mullen for the plaintiff Svothi, Inc., and with  
18 me on the line today is my partner Martin Arms.

19 THE CLERK: And for the defendant.

20 MR. RAVI IVAN SHARMA: Ravi Ivan Sharma, 26  
21 Broadway, New York, New York, for defendants, both of  
22 them.

23 THE CLERK: Thank you.

24 THE COURT: Hi, good afternoon. We're here  
25 today for a hearing in conjunction with counterclaim-

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2 plaintiff's application for a preliminary injunction as  
3 well as a premotion conference ahead of the defendants'  
4 anticipated motion to stay the case pending arbitration  
5 and to implead and enjoin third parties. I'll address  
6 both matters in turn. I've reviewed the parties'  
7 submissions. I want to address a few issues first.

8                 Regarding ownership of the mark, it seems that  
9 it's very clear it's undisputed that this mark is not  
10 registered. Is that correct, counsel for plaintiff?

11                 MR. MULLEN: This is Mr. Mullen for the  
12 plaintiff. That's correct, Your Honor.

13                 THE COURT: Is that correct, counsel for  
14 defendant?

15                 MR. SHARMA: This is Ravi Sharma for defendant.  
16 That is correct.

17                 THE COURT: All right, my understanding is that  
18 from the submissions that the plaintiff claims that it  
19 is the owner of the mark and has been using the mark  
20 since about 2010. Is that correct, counsel for  
21 plaintiff?

22                 MR. MULLEN: Yes, Your Honor, for the  
23 plaintiff, yes.

24                 THE COURT: And for the defendant, defendant  
25 claims that it is the owner of the mark and has been

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2 using the mark since 2007, is that correct?

3 MR. SHARMA: Ravi Sharma for defendant, yes,  
4 that is correct, Your Honor.5 THE COURT: Now, let me ask a few more  
6 questions then. Defendant, is it correct that you have  
7 known about plaintiff's use of the mark since on or  
8 around 2010?9 MR. SHARMA: I would say that isn't necessarily  
10 correct. The defendant has known --11 THE COURT: Okay, how long has defendant known  
12 about - okay, go ahead.13 MR. SHARMA: Well, the defendant has known  
14 since 2010 that an affiliate company of plaintiff was  
15 using the mark to exploit videos that defendants and the  
16 other entity joined together to exploit. Based on the  
17 complaint, it appears that plaintiff has claimed that it  
18 was the owner-operator of those websites since 2010 not  
19 its affiliate. My client always believed that it was  
20 the affiliate that operated and owned those websites  
21 because that is exactly what the affiliate and my client  
22 agreed to in their joint venture agreement.23 If Svothi, the plaintiff, was operating the  
24 site or, and because they're co-owned by the same  
25 individual, at best it would've been under a license.

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2 But as to when the actual knowledge that Svothi was  
3 operating the site, that's what they alleged in the  
4 complaint. Frankly, that was probably the first that  
5 that was asserted to my client's actual knowledge.

6 THE COURT: Well, when did the defendant know  
7 that the plaintiff here was using the mark?

8 MR. SHARMA: Well, when the plaintiff alleged  
9 in the complaint that it was using the RFC mark, that's  
10 when it came to the attention that it was plaintiff that  
11 was using the RFC marks as opposed to the other company,  
12 Videoapp. After the breakdown of the Videoapp and my  
13 client's joint venture agreement in December of 2024, my  
14 client was getting ready to seek action against Videoapp  
15 for continuing to utilize the marks on the website  
16 despite demands to take such marks down. And then  
17 Svothi, the plaintiff here, filed this lawsuit alleging  
18 that Mr. Felt and, therefore, also Dark Alley Media was  
19 using a subset of those marks which it alleges is called  
20 the RFC marks, and here we are.

21 So if Svothi's using them, they need to stop,  
22 and also Videoapp, the joint company also needs to stop.

23 THE COURT: But from defendants' perspective is  
24 there any distinction that makes a difference between  
25 the plaintiff and the affiliate of plaintiff in terms of

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2 the relief that the defendant is seeking?

3 MR. SHARMA: No because if plaintiff was using  
4 the mark because it was the actual operator of the  
5 website from whatever period, we have evidence that  
6 showed that it added its name to the website in 2023,  
7 yet at the same time said it was licensing materials  
8 from Videoapp which is the sister company that we're  
9 talking about. All of that was done pursuant to a  
10 license from Videoapp which was pursuant to the license  
11 terms of the joint venture agreement which said that as  
12 long as the joint venture was in place, the joint  
13 venture would own these marks and that after termination  
14 those marks would go to either one of the two parties,  
15 depending on how the termination actually occurred.

16 So the answer is the same relief would be  
17 asserted against Videoapp as it is against Svothi which  
18 is that neither of these companies should be using the  
19 marks.

20 THE COURT: But certainly then the defendant is  
21 aware that Videoapp was using the mark since around  
22 2010.

23 MR. SHARMA: One hundred percent. The joint  
24 venture was using the mark, and my client and Mr. Felt  
25 and the owner of Videoapp and plaintiff here, Mr.

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2 Todaro, worked closely together with the joint venture.  
3 The 2019 joint venture written agreement by its own  
4 terms memorializes the joint venture that started back  
5 around 2010. So absolutely the answer is yes, but only  
6 under and pursuant to the joint venture agreement.

7 THE COURT: So from defendants' perspective,  
8 the claim that you are the exclusive owner of the mark  
9 is tethered to your argument that the plaintiff breached  
10 the joint venture agreement. Is that correct?

11 MR. SHARMA: Not exactly. If the plaintiff, we  
12 believe the plaintiff is the alter ego of its sister  
13 company Videoapp. If they are, indeed, alter egos of  
14 each other, then, yes, plaintiff along with Videoapp  
15 reached the agreement. But even if they are not alter  
16 egos, if plaintiff's sole use of the mark was under  
17 license from its sister company Videoapp which was in a  
18 joint venture agreement with my client, then our  
19 argument would be that Videoapp ceased having any rights  
20 to utilize the mark following the termination of a joint  
21 venture agreement on December 4 of 2024 and that,  
22 therefore, any license that plaintiff might have from  
23 its sister company Videoapp can be no more because  
24 Videoapp has no more mark to license with.

25 THE COURT: Okay, I think that it seems to me

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2 to be the same thing. I think your position is that the  
3 joint venture agreement was such that whoever breaches  
4 the agreement loses the mark. The person who breached  
5 the agreement loses the mark, and the other person then  
6 owns the mark. Is that correct?

7 MR. SHARMA: It's slightly, that is close to  
8 fully correct. It's a little bit more nuanced than  
9 that. The remedies for who, for what happens to the  
10 marks depending on who breaches are slightly different.  
11 In the case of - well, and I'll just back up just one  
12 second. The joint venture agreement essentially has my  
13 client creating the content and the Videoapp, Mr.  
14 Todaro's company, publishing it and monetizing it and  
15 splitting the proceeds. So what happens is, if  
16 Videoapp, Mr. Todaro's companies breach, then all the  
17 marks are deemed to go to my client. On the other hand,  
18 if my client is the one that breaches, what it says is  
19 that both parties get to continue using the marks, but  
20 Videoapp could actually start making its own content  
21 using the mark as well. And, of course, it retains its  
22 website, etc.

23 So pretty much both parties get to go away with  
24 what they brought, but in the case of my client's  
25 breach, if that were true, then my client still could

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2 use the marks but Videoapp could go ahead and keep the  
3 site and create its own content and apply those marks to  
4 its content. So it's slightly different.

5 THE COURT: Okay, but would it be fair to say  
6 that under the defendant's theory, if defendant breached  
7 the joint venture agreement, the defendant wouldn't have  
8 any right to try to prevent Videoapp from using the  
9 mark? Is that correct?

10 MR. SHARMA: On its own websites and with  
11 content shown on its websites, that's correct. I don't  
12 believe the agreement allows, would allow Videoapp to  
13 create content and how them or sell them elsewhere. But  
14 so for those specific things, using the marks on its  
15 website, creating content and selling it on its website,  
16 the answer would be correct, my client would not have a  
17 right to say you can't do that because the joint venture  
18 agreement says that it can.

19 THE COURT: Okay. Let me then hear from  
20 plaintiff. What is plaintiff's position as to the  
21 relevance as to any of the joint venture agreement with  
22 plaintiff's claim to ownership of the mark?

23 MR. MULLEN: We don't have a claim that the  
24 joint venture agreement is relevant to the plaintiff's  
25 ownership of the mark. Svothi's use both predates the

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2 joint venture agreement by nearly nine years and is  
3 independent of that joint venture agreement. So as to  
4 the plaintiff's affirmative claims which are not being  
5 advanced on the defendant's motion for a preliminary  
6 injunction in support of its counterclaims, I think the  
7 answer is none.

8 As for the plaintiff's position on the joint  
9 venture agreement as it relates to the defendant's  
10 injunction motion, Your Honor, our position is that it's  
11 not before the Court because the defendant has  
12 threatened to, but has not, impleaded Videoapp who is  
13 the allegedly counterparty under that joint venture  
14 agreement.

15 And so if I can summarize what I think I heard  
16 opposing counsel describe as a vigorous dispute between  
17 Dark Alley Media, the defendant, and the non-party  
18 Videoapp over who may have breached the joint venture  
19 agreement and what the respective parties' rights are  
20 under that joint venture agreement, it's just not  
21 briefed and joined because the other party under that  
22 agreement is not a party to the motion that's been  
23 brought.

24 THE COURT: Okay. What is plaintiff's position  
25 on the relationship between plaintiff and Videoapp?

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2 MR. MULLEN: So these entities have common  
3 ownership. We do not deny that Mr. Todaro is a  
4 shareholder in each of those two entities. But we  
5 vigorously dispute the defendants' assertion that they  
6 are alter egos, and for the reasons that we set out in  
7 our papers, we think the defendants fall far short of  
8 proving, let alone to the clear standard required for  
9 this mandatory injunction, that assigning of alter ego  
10 status is appropriate.

11 THE COURT: Okay. Let me ask plaintiffs this,  
12 what is your position regarding the relationship of  
13 plaintiffs and Videoapp as it pertains to the joint  
14 venture agreement?

15 MR. MULLEN: So the plaintiff Svothi, Inc. is  
16 not a party to the joint venture agreement. Am I  
17 understanding the Court's question correctly? Is that  
18 responsive?

19 THE COURT: No, that's not my question. My  
20 question is the defendants put forth the position that  
21 Videoapp signs this joint venture agreement and that  
22 plaintiff is claiming perhaps additional rights to the  
23 mark as a result of this agreement, and I'm trying to  
24 make sure that is your position or if your position is  
25 that the joint venture agreement has nothing to do with

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2 plaintiff's rights or defendants' rights to use the  
3 mark?

4 MR. MULLEN: I'm sorry, so I can certainly  
5 speak for the plaintiff Svothi, Inc. here, Your Honor,  
6 and I can say that the joint venture agreement doesn't  
7 underpin and is not a condition to our rights to use the  
8 mark, marks. Again, Svothi has been exploiting these  
9 marks, including via the website, since at least 2010,  
10 and the joint venture agreement that we're talking about  
11 was signed in 2019.

12 As to whether the joint venture agreement  
13 affects the defendants' right to use the marks, I'm not  
14 sure that the plaintiff has a position on that, at least  
15 one that I can articulate now, but forgive me if I'm  
16 misunderstanding the Court's question.

17 THE COURT: No, that is my question. What is  
18 the plaintiff's position regarding plaintiff's use of  
19 the mark related to Videoapp's use of the mark? Is your  
20 position that plaintiff owns the mark and has licensed  
21 the mark to Videoapp or something else?

22 MR. MULLEN: I don't know of any, I don't know  
23 that the plaintiff has licensed the mark to Videoapp.  
24 No, I don't believe we're taking that position.

25 THE COURT: So then how did Videoapp get to use

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2 the mark? If plaintiff is the --

3 MR. MULLEN: I don't know --

4 (interposing)

5 THE COURT: If your position is that plaintiff  
6 was the sole owner of the mark and that Videoapp is  
7 separate and distinct from plaintiff, by what mechanism  
8 does Videoapp have a right to use the mark, if any?

9 MR. MULLEN: I don't know that Videoapp has a  
10 right to use the mark, Your Honor. I don't think  
11 there's evidence in the record of, and certainly none  
12 that plaintiff has advanced that Videoapp has the right  
13 to use the mark.

14 THE COURT: And you said that there's an  
15 individual in common between the plaintiff and Videoapp?

16 MR. MULLEN: That's right, Your Honor. It is  
17 the --

18 THE COURT: -- that individual --

19 (interposing)

20 MR. MULLEN: -- alleged --

21 THE COURT: The alleged, go ahead.

22 MR. MULLEN: Forgive me, Your Honor, please  
23 continue. The alleged or the threatened third-party  
24 defendant, Mr. Todaro, who has an ownership stake in  
25 both Videoapp and the plaintiff Svothi.

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2 THE COURT: So is it your position that Mr.  
3 Todaro, if Mr. Todaro entered into a joint venture with  
4 the defendant on behalf of Videoapp, that that joint  
5 venture was invalid because he never had a right to use  
6 the mark in connection with Videoapp?

7 MR. MULLEN: No, that's not our position, Your  
8 Honor.

9 THE COURT: So what is your position on that?

10 MR. MULLEN: I don't know that I have a  
11 position on that, Your Honor, it's that Svothi, Inc. has  
12 a position on whether Videoapp's entry into the joint  
13 venture agreement was valid or invalid, I don't have a  
14 position on that.

15 THE COURT: Okay, let me ask a few more  
16 questions then. Let's me ask, back to the defendant, in  
17 a typical injunction case, the parties seeking an  
18 injunction must show irreparable harm, either a  
19 likelihood of success on the merits, or both serious  
20 questions on the merits and a balance of hardship  
21 decidedly favoring the moving party, that a preliminary  
22 injunction is in the public interest, but where an  
23 injunction would alter the status quo, the standard is  
24 heightened. The party seeking an injunction must show a  
25 strong showing of irreparable harm and a clear

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2 likelihood of success on the merits. This seems to me  
3 that your injunctive relief that you are seeking would  
4 alter the status quo. Do you agree with that?

5 Defendant.

6 MR. SHARMA: I don't. The reason I don't is  
7 that we disagree with the plaintiff's assertion as to  
8 what the status quo is. The plaintiff asserts the  
9 status quo is that plaintiff has been using and owning  
10 this mark since 2010 and exploiting it since then, and  
11 that is the status quo that would be upset. Our  
12 position is that the status quo is that plaintiff has  
13 been, if plaintiff has been using this mark since 2010  
14 but in any event up until now from some point, the only  
15 status quo that they were using this mark as the  
16 licensee of Videoapp pursuant to the joint venture  
17 agreement, which just terminated about, just over at  
18 this point 60 days ago. So that was the status quo that  
19 there was a license agreement, that license agreement is  
20 over, and that moment just prior to December 4 of 2024  
21 was the status quo, and that's, we'd like to go back to  
22 that contract, but that contract obviously is over, and  
23 the marks now need to go elsewhere. So we disagree that  
24 the status quo is ten years or fifteen years of use by  
25 the, unfettered use by the plaintiff but at most

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2 licensed use.

3 THE COURT: When was the joint venture  
4 agreement terminated, to use your terminology?5 MR. SHARMA: Yes, the joint venture agreement  
6 was terminated pursuant or by a letter from me on  
7 December 4 to Mr. Mullen who represented Videoapp which  
8 is the other company that we're discussing. Videoapp  
9 had in August had stopped paying its payments to my  
10 client pursuant to the joint venture agreement. My  
11 client made demand of such more than 30 days prior to  
12 the termination and provided, as per the joint venture  
13 agreement provided Videoapp the opportunity to pay the  
14 monies owed pursuant to their use of the exploitation of  
15 the marks on the website that we're all discussing right  
16 now in July and August when the payments stopped. When  
17 those payments were not received, I sent a letter  
18 terminating the agreement, as per the terms of the  
19 agreement, you know, how to do it, etc. And that's what  
20 terminated the agreement.21 THE COURT: And if the agreement is, in fact,  
22 terminated, it does seem from our discussion before,  
23 that one critical factor is going to be who potentially  
24 was at fault for potentially breaching that agreement.  
25 And I'm sure the parties have different views. Is that

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2 correct, defense counsel?

3 MR. SHARMA: That is absolutely correct. The  
4 parties obviously, Videoapp, Mr. Mullen is not going to  
5 speak for Videoapp today I don't think. Maybe he will,  
6 who knows. But there were competing letters between  
7 myself and Mr. Mullen, and we believe that at an  
8 arbitration, which is also part of the, or any  
9 adjudication, whether it's arbitration or not, to just  
10 construe what happened with the joint venture, that we  
11 would prevail and that it would be, being that it was  
12 Videoapp itself that had breached without cure and not  
13 our client, my client.

14 THE COURT: And up to today, there has been no  
15 determination by a court, an arbitrator, or a settlement  
16 between the party as to who breached the agreement, is  
17 that correct?

18 MR. SHARMA: That is correct. We did file and  
19 seek arbitration before JAMS below. That has been  
20 vigorously tried, opposed by Videoapp. Videoapp has  
21 filed an Article 78 proceeding saying that by mentioning  
22 them here, we shouldn't be able to arbitrate, and they  
23 sent a letter to that effect, to the JAMS representative  
24 who rightly so said, well, unless both parties agree, we  
25 can't do anything. Because, unfortunately this

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2 arbitration, the arbitration provision didn't specify  
3 which specific company, or for that the arbitration  
4 should take place in, whether it should be JAMS or the  
5 American Arbitration Association.

6 So that is correct, we are trying, but that's  
7 what we should do, we mentioned that to this Court in  
8 the first instance when we answered the complaint that  
9 we believe that this matter and most of this matter  
10 should be arbitrated and that we probably should bring  
11 in the other parties but still only to preserve the  
12 issues and then get it down to arbitration. If we can't  
13 go to arbitration, then maybe it should all be here,  
14 but, yes, my clients want to litigate that because they  
15 want those marks back, and those marks now apparently  
16 are being held by Svothi. In fact, they are because  
17 that's what Svothi says in its complaint here.

18 THE COURT: So in December when the agreement  
19 was terminated up till now, there has been no  
20 determination by anyone as to who breached the  
21 agreement, from December until now, it's the defendants'  
22 position, and I think it's the plaintiff's position,  
23 that the plaintiff has continued to use those marks.  
24 Correct, defense counsel?

25 MR. SHARMA: Yes, correct.

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2 THE COURT: Why isn't that the status quo?

3 MR. SHARMA: Now between December, oh, between  
4 December '24, between December 4 and now? Well --

5 THE COURT: Yeah.

6 MR. SHARMA: -- that 65, 70 day is the status  
7 quo as of this moment. That is --

8 THE COURT: And in terms of the status quo  
9 being that the plaintiff has been using the mark, that  
10 has also been true in addition to that period from  
11 December until now. That has also been true since 2010.  
12 Correct?

13 MR. SHARMA: As I said, the plaintiff using the  
14 marks, if they were in 2010, like I said, we don't know  
15 that it was Svothi using the mark. Svothi's name did  
16 not appear onto the websites until sometime in 2023. So  
17 we can go back that far because we found evidence of  
18 that and prevented that in the reply affirmation, I'm  
19 sorry, declaration of my client, Mr. Felt. But back to  
20 2010 it was our understanding that it was Videoapp that  
21 was utilizing it pursuant to the joint venture  
22 agreement.

23 THE COURT: Okay. Thank you. I'm going to  
24 deny the request for preliminary injunction. I do find  
25 that this is the status quo right now that you are

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2 seeking a mandatory injunction. Also, issuing such  
3 injunctive relief would require a determination as to  
4 who owns the mark, the unregistered mark, and perhaps a  
5 determination as to who breached the joint venture  
6 agreement, and those are issues that are ripe for some  
7 sort of discovery for the litigation. A preliminary  
8 injunction is an extraordinary remedy, and I will not  
9 impose that.

10 Let's move on to the other issues raised by the  
11 defendant. You were seeking a stay pending arbitration.  
12 We received some filings from the plaintiff saying that  
13 arbitration has been delayed and/or cancelled. Let me  
14 hear from defendant on this.

15 MR. SHARMA: Yes. So we filed our answer which  
16 included counterclaims which names, at least alleged in  
17 the allegations, obviously Videoapp and Mr. Todaro and  
18 others. And my motion was to, first, firstly to add  
19 those parties to the complaint but at the same time with  
20 the understanding that, and this is why I mentioned in  
21 the footnote of our answer, that we're adding these  
22 people and these parties and bringing these claims to  
23 preserve them, but we fully understand that there's a  
24 contract between Videoapp and my client that calls for  
25 arbitration. And we're not trying to fight that, but

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2 | we're here, we're being pulled into federal court. And  
3 | so I want to simultaneously bring them in but at the  
4 | same time agree that it should be (indiscernible). And  
5 | I think at this point, given that plaintiff has tried to  
6 | derail the arbitration, isn't leaning in, it's actually  
7 | doing everything possible to avoid it, it doesn't appear  
8 | that it wants to arbitrate, but it certainly doesn't  
9 | seem to be interested, and I said plaintiffs, well,  
10 | plaintiff, Videoapp, Mr. Todaro, doesn't seem to want to  
11 | deal with the joint venture agreement at all. It wants  
12 | to basically have Svothi, the plaintiff here, hold onto  
13 | evidence and sidestep and go around that arbitration,  
14 | that joint venture agreement.

15 | So my motion to add would remain, to allow us  
16 | to amend the cross-complaint or the counterclaims to add  
17 | their names as counter-defendants stands, but in terms  
18 | of the motion to stay pending arbitration, I think  
19 | probably it should be a motion to compel arbitration at  
20 | this point. Mr. Mullen has brought an Article 78 in  
21 | regard to that arbitration in New York State Supreme,  
22 | and I expect that I'll be counterclaiming to compel  
23 | arbitration as opposed to just defending against the  
24 | arbitration.

25 | So that's what I think is going on here, and we

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2 want to be sure that everybody gets their day in court,  
3 we prefer arbitration, but it could be right here before  
4 Your Honor if that's the way it has to be. But you're  
5 right, these things need to get decided, and it is a  
6 complicated case given plaintiff's strange position.

7 THE COURT: All right, let me hear from  
8 defendant on your desire to implead the third party  
9 under Rule 13. Let me hear from you. I think I have a  
10 sense of your position on that. I guess let me hear  
11 from plaintiff. Does plaintiff plan to oppose such a  
12 motion?

13 MR. MULLEN: Well, Judge, I confess I don't  
14 know if we're in the 14-day window when the plaintiff  
15 can do it without leave. I'm not inclined to consent to  
16 something I haven't seen yet, and I don't know what  
17 claims are being threatened, but in principle, no, we'd  
18 like to go ahead and get everybody in one court, this  
19 court is an excellent one, and get these issues  
20 resolved. So subject to what my clients may say after  
21 seeing a draft third-party complaint, I don't think we  
22 would oppose a motion to implead.

23 THE COURT: Okay. And let me hear from  
24 plaintiff on this motion for a stay pending arbitration.

25 MR. MULLEN: Sure. So just to put the timeline

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2 in context, my client filed this complaint in January.

3 Three days later the defendants noticed an arbitration

4 against the non-party Videoapp, and then they carried

5 that notice or the demand for arbitration back to this

6 Court saying that my client Svothi's claims couldn't go

7 ahead because the defendant has initiated an arbitration

8 against an entity that it claims is an alter ego. Now,

9 it hasn't proven that alter ego theory in this Court or

10 in arbitration, and, of course, as the Court has seen,

11 JAMS has told us now that it won't go forward with an

12 arbitration because there's no agreement between the

13 defendant and the non-party to arbitration before JAMS.

14 So my client's position, strictly speaking, is  
15 that we would oppose the defendants' anticipated motion  
16 to stay the case in favor of an arbitration that is not  
17 proceeding and likely will not any time soon given that  
18 there's no arbitration pending and there's also  
19 Videoapp's petition to permanently stay any arbitration  
20 that the defendant might assert against it.

25 MR. MULLEN: There have been, Your Honor, and

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2 without getting into the substance, I think Mr. Sharma  
3 and I have been a little busy this past week dealing  
4 with these motion papers, but stepping out of my role as  
5 an advocate and into my role as an experienced  
6 litigator, I hope they will continue.

7 THE COURT: Without getting into detail, can  
8 you give me a sense, well, without getting numbers, was  
9 there a demand made and was there an offer made in  
10 response to that demand?

11 MR. MULLEN: Your Honor, the answer's yes to  
12 both.

13 THE COURT: And, again, without getting into  
14 detail, how would counsel, I will hear from both  
15 counsel, how would you describe the distance between the  
16 parties in aquatic terms? Are we talking about the  
17 pond, a river, or an ocean?

18 MR. MULLEN: This is Mr. Mullen for the  
19 plaintiff. Maybe a Great Lake, Your Honor, in this  
20 metaphor.

21 THE COURT: Okay, let me hear from defendant on  
22 this.

23 MR. SHARMA: Ravi Sharma for defendant, Your  
24 Honor. The communications had a number of different  
25 facets. One was a global type of settlement that would

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2 basically allow the parties to walk away from each  
3 other, and I think Mr. Mullen's characterization as a  
4 Great Lake is accurate. There was other facets which  
5 involved similar relationships in regard, similar to but  
6 not exactly the same as the joint venture agreement.  
7 And in those regards I would not say Great Lake; I would  
8 say that whole process being so nuanced it's hard to say  
9 how far apart people are or were. And it may be still  
10 on the able; it may not be on the table; it's had to  
11 say.

12 THE COURT: Okay, thank you. All right, let me  
13 just find out from the parties regarding potential  
14 settlement talks. Do the parties think they could do  
15 this on their own or do you think it would be helpful to  
16 have referral to a magistrate judge or to mediation  
17 program? Do the parties want to take a shot at this  
18 further on their own first?

19 Here's what I'm thinking, let me just tell you  
20 what's on my mind. I'm thinking I'll give the parties a  
21 couple of weeks to engage in some settlement  
22 discussions, and if that's fruitful, great, and let me  
23 know if you need a little bit more time. If not, the  
24 parties can submit a proposed briefing schedule for the  
25 impleader motion. It may be that during the course of

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2 negotiation maybe the parties may have some agreement on  
3 that. But the parties can give me an agreed-upon  
4 briefing schedule for the motion to implead the third  
5 party in that joint status report, and we can have that  
6 joint status report due on March 6th. How does that  
7 sound to plaintiff?

8 MR. MULLEN: That sounds good to the plaintiff.  
9 Your Honor, I might add one request which I regret I  
10 haven't raised with Mr. Sharma yet, which is that my  
11 client's answer to the counterclaims or premotion letter  
12 on it motion to dismiss the counterclaims would be due  
13 Friday, this Friday, absent an adjustment. I'm  
14 wondering if we can move that deadline out too so that  
15 if we're engaging in further motion practice and  
16 impleader, we can do all of that motion briefing at the  
17 same time.

18 THE COURT: Okay, how does that sound to  
19 defendant?

20 MR. SHARMA: Ravi Sharma for defendant. Before  
21 I answer that, based on what was said earlier by Mr.  
22 Mullen, I wasn't sure that Mr. Mullen had not said that  
23 he didn't think they were going to oppose that motion to  
24 bring in Videoapp but that he was holding that final say  
25 until he spoke to his client. So the question would be

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2 whether or not the Court would want to hear from, I mean  
3 we can put it plainly, the additional claims are going  
4 to be the same as the current counterclaims as against  
5 plaintiff here. We named the individuals in the  
6 allegations. We just didn't actually name them as  
7 counterclaim defendants. So if there's no need for a  
8 motion for the interpleader motion, if we could agree,  
9 then we don't need to do that.

10                   In terms of the timing, in terms of putting off  
11 his time to answer, I'm amenable to that. I think,  
12 however, March 6 is a little soon. I also want to go  
13 back and say that I believe that we would be served with  
14 assistance with the Court in regard to settlement only  
15 because I think it would be worthwhile to have an  
16 additional set of eyes and set of eyes that can make  
17 recommendations to the clients in regard to the overall  
18 cases here.

19                   And, finally, the March 6 date is a little soon  
20 for me because there is, there are motions, Article 78  
21 motions below in this matter, and now there is a new  
22 motion to dismiss that's been filed in another matter by  
23 Videoapp in a matter that both my clients are involved  
24 with, and that motion return date is pretty much within  
25 a week of that same March 6 date.

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2 THE COURT: The Article 78 proceeding, is your  
3 opposing counsel the same counsel that's on this call  
4 now?

5 MR. SHARMA: Yes. Mr. Mullen and his firm are,  
6 and myself, are counsel on all at this point, including  
7 the arbitration, four matters.

8 THE COURT: So what I was proposing by the  
9 March 6 date was that in that joint status report the  
10 parties can let me know several things. They could let  
11 me know whether or not they've settled the matter  
12 amongst themselves. If not, they can let me know  
13 whether or not they would like a referral to a  
14 magistrate judge or the court's mediation program. They  
15 can also in that joint status report let me know if they  
16 have discussed the issue of the impleading motion, and  
17 if they have resolved it, you can let me know that in  
18 the report. And if not, you can give me a proposed  
19 briefing schedule for that implead motion, that motion  
20 to implead on the 6th. It doesn't mean your motion is  
21 due that day. You give you a proposed briefing  
22 schedule.

23 So this should not affect really too many  
24 substantive motions that defense would be filing between  
25 now and March 6 or whether there should be some work in

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2 terms of potentially trying to settle this matter, and  
3 obviously, if this matter settles, you won't have that  
4 extra work in the Article 78 proceeding. How does that  
5 sound to defense counsel?

6 MR. MULLEN: Your Honor, for the plaintiff  
7 that's - oh, excuse me.

8 THE COURT: How's that sound to defense  
9 counsel?

10 MR. SHARMA: That sounds, again, it still  
11 sounds relatively tight. Mr. Mullen is asking me to  
12 consent to delay his answer. If we're settling, then,  
13 if we're looking to settle or trying to settle or trying  
14 to spend some time to settle, I would be asking Mr.  
15 Mullen to consider the other pending motions that he  
16 filed be similarly delayed so that we can concentrate on  
17 settling, and at least there'll be something to, some  
18 basis to settle. Because otherwise I'm going to be  
19 doing a lot of work even prior to March 6 on these two  
20 other motions. And I should --

21 (interposing)

22 THE COURT: When are the other motions - again,  
23 I'm not going to get into the motions --

24 MR. SHARMA: Yeah --

25 (interposing)

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2 THE COURT: -- that are in front of another  
3 court, but when are these motions due?

4 MR. SHARMA: One is due I believe, one is the  
5 return date is the beginning of March or within seven  
6 days or that, Mr. Mullen, your Article 78 I'm referring  
7 to, and the latest one that was filed today I believe is  
8 March 13, but because of reply time, I mean response  
9 time it lands smack right before, right around the March  
10 6 period that you mentioned. So there has to be work  
11 done.

12 THE COURT: Well, I guess I'm trying to  
13 understand just as a practical matter, if you're asking  
14 for more time for the status report, that makes it much  
15 more likely that you're going to be filing these motions  
16 as opposed to perhaps --

17 MR. SHARMA: No --

18 (interposing)

19 THE COURT: -- these reports filed earlier, and  
20 maybe there can be a determination as to whether or not,  
21 if you're close to settling, you don't need to file  
22 these motions. Are you saying the March 6 deadline --

23 MR. SHARMA: I don't mind the date --

24 (interposing)

25 THE COURT: Go ahead, what were you going to

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2 say?

3 MR. SHARMA: I don't, sorry to interrupt, I  
4 don't disagree with the March 6 date for the reasons you  
5 said. I was speaking mainly to the concept of seeking,  
6 Mr. Mullen seeking extra time to answer in the first  
7 place.

8 THE COURT: Yes. No, I think in terms of the  
9 litigation here I think it makes sense for the parties  
10 to try to focus on settling this matter, and then,  
11 therefore, we hold off on any filing of any motions or  
12 answers or motions at least until March 6, and then  
13 we'll see where we are. And in that March 6, again,  
14 joint status report, you can let me know if there's an  
15 agreement to implead, give me a proposed deadline for  
16 the answer or the motion, but hopefully the parties will  
17 let me know that you're on track for settling. But  
18 let's have that joint status report filed on March 6.  
19 Does that work for the plaintiff?

20 MR. MULLEN: It does, Your Honor.

21 THE COURT: Does that work for the defendant?

22 MR. SHARMA: That's fine, Your Honor, yes, Your  
23 Honor.

24 THE COURT: Okay. All right, we are adjourned,  
25 thank you.

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2 MR. MULLEN: Thank you.  
3 MR. SHARMA: Thank you, Your Honor.  
4 (Whereupon, the matter is adjourned.)  
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C E R T I F I C A T E

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4 I, Carole Ludwig, certify that the foregoing  
5 transcript of proceedings in the case of SVOTHI v. DARK  
6 ALLEY MEDIA, Docket #25cv0333, was prepared using  
7 digital transcription software and is a true and  
8 accurate record of the proceedings.

9

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Signature

*Carole Ludwig*

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Carole Ludwig

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Date: March 5, 2025

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